

**EASTPORT CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
TUESDAY, OCTOBER 22ND, 2013
5:30 P.M. - SHEAD HIGH SCHOOL - BAND ROOM**

1. CALL TO ORDER

The meeting was called to order at 5:30 p.m. by Council President, Mary Repole. Those in attendance and present were: Councilor Michael Cummings, Councilor Colleen Dana-Cummings, Councilor Scott Emery, and Council President, Mary Repole. Also present, City Clerk, Ella Kowal.

Councilor Gilbert Murphy is not present as he had to attend a meeting in Lubec.

City Manager, Larry Post, was not *yet* present as he was in attendance of a Harbor/Port meeting and would be here shortly thereafter.

Council President called for a motion to go into Executive Session.

2. EXECUTIVE SESSION

2A) MOTION TO GO INTO EXECUTIVE SESSION

MOTION DANA-CUMMINGS SECOND EMERY
To go into Executive Session for Personnel Matters under Title 1 M.R.S.A. § 405(6)(A).

PASSED 4-0 TIME: 5:31 P.M.)

While Council was in Executive Session, the City Manager did arrive.

Uncertain of the time, and while Council was in Executive Session; Jon McNerney informed the City Manager and the City Clerk that when Legal Counsel, Dennis Mahar, arrives – they would like him present in Executive Session. Upon Legal Counsel’s arrival, he was told that Executive Session was being held in the room next to the Band Room and that he has been asked to attend.

2B) MOTION TO COME OUT OF EXECUTIVE SESSION

MOTION EMERY SECOND CUMMINGS
To come out of Executive Session.

PASSED 4-0 (TIME: 6:07 P.M.)

2C) ACTION TAKEN BY COUNCIL - EXECUTIVE SESSION
NO ACTION TAKEN (PER COUNCIL PRESIDENT, MARY REPOLE)

3) **PUBLIC HEARING - FIREWORKS ORDINANCE**

EASTPORT CITY COUNCIL

**PUBLIC HEARING
FIREWORKS ORDINANCE**

**TUESDAYS, OCTOBER 22ND, 2013
6:00 P.M. - SHEAD HIGH SCHOOL - BAND ROOM**

Those present and in attendance of the public hearing are: Councilor Michael Cummings, Councilor Colleen Dana-Cummings, Councilor Scott Emery, and Council President, Mary Repole. Also present is the City Manager, Larry Post, and City Clerk, Ella Kowal.

Public Attendance was as follows: Kathy Lewis, Danny Waggoner, Ruth McInnis, Jon McNeerney, Greg Golding, Nan Milani, Diane Muessig, Jan Finlay, Bob DeWitt, Carolyn Lowe, Winnie Higgins, Greg Noyes, Bernard Grazulwich, Vicki Morang, Dave Morang, Alex Smeaton, Lora Whelan, Phyllis Bradbury, Damon Weston, Walter Cummings, Christopher Scott, and Richard Clark.

The Council President, Mary Repole, declares the public hearing open at 6:08 p.m. and expresses that the purpose of the hearing is receive public input a proposed fireworks ordinance. She then turns this portion of the meeting over to the City Manager, Larry Post. The City Manager explains that he is submitting two versions of a Fireworks Ordinance to the Council and further informs them that one is a proposed ban of all consumer fireworks and that the second one would allow and permit consumer fireworks on July 3rd and 4th; the Pirate Festival, and New Year's Eve. He continues with the reading and review of the contents and articles of the ordinances as submitted for consideration which was explicit to *Article I* being the *Preamble*; *Article II* covering its *Purpose and Authority*; *Article III* emphasizing *Definitions*; *Article IV* covering *Sale of Fireworks and Consumer Fireworks Prohibited*; *Article V* covering the *Use of Fireworks and Consumer Fireworks Prohibited*; *Article VI* covering *Exceptions*; *Article VII* covering *Violation Penalties and Enforcement*; *Article VIII* is specific to the *Effective Date*; *Article IX* covers *Severability*

Legal Counsel, Dennis Mahar, addresses the Council and informs them that the effective date needs to comply with the State statute which is 60 days in advance.

Councilor Cummings asks if the penalties and violations already comply with what the State mandates. The City Manager and the Council President responded "no" that it was the City's. The City Manager reminded Council that they had previously looked at one where there were different zones in the City with different regulations and that he adapted to that. Councilor Cummings asks for further clarification if these are the penalties that

the State imposes. Council President, Mary Repole, responds to say that the State doesn't have a penalty and that these came from the Police Chief, Mark Emery; and Fire Chief, Richard Clark; of what they felt would be effective. Richard Clark comments to say that there is no set fine with the State because they are legal within the State. Legal Counsel, Dennis Mahar, explains that there are still some that are illegal and that there is a gradation of how much you have with fines beginning at \$500.00 up through to \$2,000.00. Councilor Cummings then comments to say that these fines are to be imposed by the City based on the State.

Winnie Higgins from the audience addresses Councilor Cummings and responds that Governor LePage says that fireworks are legal in the State of Maine and that each town or City opts to have their own ordinance.

Legal Counsel, Dennis Mahar, responds to say that if they were talking about this in 2010; there would be a fine imposed as it was prior to the legalization of the consumer fireworks.

Christopher Scott from the audience addresses Councilor Cummings and comments to say that he has been reviewing the State fireworks laws and that it is his understanding that should anyone break any of the base laws which included being on someone's property that the fines start at \$500.00 but that there is no set maximum. However, the after hours fines have been set from \$50.00 to \$200.00.

Councilor Colleen Dana-Cummings comments on the proposed ordinance that was posted locally prior to the public hearing versus the two documents that is being presented this evening and expresses her concern that the people have not had an opportunity to look at them, as she just received them herself today. She asks for clarification that this meeting is to discuss the proposed ordinances submitted to Council. Council President, Mary Repole, responds to say they can discuss it and hopefully come up with a plan of what they hope will work and vote on it and that it would take effect within sixty days. The City Manager explains that the only difference is the formatting and clarification of the definitions. Councilor Cummings expresses his disappointment that there was no representation from the Police Department. The City Manager responds to say that the Police Chief, Mark Emery, had every intention of being present for the meeting but that he had called him at 4:00 p.m. to report that he was having furnace problems.

Council President, Mary Repole, opens the floor for public comments.

Jan Finlay from the audience asks for an explanation as to how having consumer fireworks on the specified days referenced, every year; *in an R2 district* makes them any safer from fires when there's a preponderance of drugs downtown. Fire Chief, Richard Clark, refers back to the Preamble and further comments to say that the City has never had a fire from fireworks but have experienced it from lightning. Ms. Finlay expressed that she feels it is ridiculous to allow consumer fireworks in an area that is tightly congested.

Alex Smeaton from the audience responded to say that he feels the best solution is to have a zoning system and comments to say that in a town we experience things that do annoy us which are unavoidable. He continues further to say that there comes a time where we must accept that some people enjoy fireworks and that we should work towards a plan where they could be used safely.

Ruth McInnis, from the audience, tells of a fire years ago after the fireworks on Washington Street in the vicinity of where the A&P use to be.

Jon McNerney, from the audience, comments to say that he saw kids last year lighting off fireworks in the downtown area and the police was non-existent. He comments to say that he is in favor of a ban with the exception of those events specified.

Bernard Grazulwich, from the audience, comments to say that if you allow fireworks on July 4th; people from out of town are going to be throwing them out of their car and truck windows as they leave town.

Jan Finlay asks again why they cannot be banned in the *R2 district* and clarifies that this would cover Quoddy Village and the residential area downtown. This would cover the downtown area where the parties go on all night and the noise is the worst. Also with the threat of fire being the highest.

Former Councilor Dave Morang addresses the City Manager, Larry Post, with a question relative to whether or not the Police Department has received complaints with regard to fireworks. He responds that they have had *some* and is unsure of an exact number. Carolyn Lowe responds to say that they have had a lot of complaints from Kendall Head. Councilor Michael Cummings comments to say that before the first meeting he asked Mr. Post to speak with the Police Chief to get a report on the fireworks. Mr. Post responded to say that he did speak with the Police Chief and that he was going to check on it. Jon McNerney feels that if there are no records of such complaints then there is no Council knowledge which in turn reflects back to the Police Department's responsibility to the filing of the complaints and their response.

Carolyn Lowe addresses the Council and reflects back to a meeting held on October 9th, 2013 of which she attended. She went home from the meeting to find that fireworks were *still* going on and had been since 6:00 o'clock. Her dogs were very upset. She called "911" and reported it. The person who took the call responded.... "oh that's fireworks, we can't do anything about it". Jan Finlay comments to say that she has had so many people come up to her since that meeting and say that they do not call the police department because they no that that can't get through or no one is going to do anything about it and that they feel it is a waste of time because they will be told they have to catch them in the act. Winnie Higgins responds that even if they catch them in the act, what can be done – this is why the ban is needed. Carolyn Lowe asks if she could come down front and approach the Council. She continues by sharing with the Council that she came home from the October 9th meeting and proceeded to calm the dogs down and presented them with a metal bucket with teeth marks from the dogs being upset. She reiterates that she is trying to run a business.

Danny Waggoner makes a comment that the fine is not high enough as the purchase of fireworks is much more significant. He expresses that the fines must be stiffer if it is to be effective and a deterrent.

Jon McNerney asks legal counsel about the City's cost. Mr. Mahar responds that there are Court fees, filings, and his fee which could run anywhere from \$300.00 to \$400.00, per incident. He also notes that there could be the potential for an officer's time.

Bob DeWitt from the audience comments to say that there is already an ordinance in place as it is clear that you cannot set them off downtown, you cannot light them on private property without permission, and you cannot set them off after 10:00 o'clock. He further reminds Council that it sometimes doesn't get dark until 9:00 o'clock. Dennis Mahar responds that you cannot set them off on public property without permission and that there is nothing to say that someone on private property can't give permission.

Elizabeth Hastings-Renner comments to say that she feels if fireworks are banned it will become more of an issue and feels if they were legal there would be a better compromise to please both sides, maybe consider lowering the noise ordinance to 9:00 o'clock. A comment came from the audience that they wouldn't obey the time limits. Ms. Hastings-Renner responded to say they wouldn't if it was banned either and that they may possibly do it even more.

Chris Scott comments came so say that he feels the issue was more a lack of police presence and enforcement and did not feel completely banning would resolve the issue. He further comments to say that if you are under twenty-one, you cannot possess fireworks; but they still have them. Winnie Higgins responds to say that if the fines are significant, one might be less likely to set them off.

Alex Smeaton from the audience and comments to say that making something illegal or prohibited does not mean that they are not going to do it. Simply passing an ordinance or a law does not mean that they will not continue to do it. Jan Finlay responds that laws are created for good reason. Even it were to only reduce the number of fireworks that go off, that is better than what the City has right now.

Former Councilor Dave Morang comments to say that he is in agreement with Carolyn Lowe in that it is pure harassment with what is happening to her. He asks if there is anyway they could add to the ordinance to reflect any licensed entity or business. Carolyn Lowe informs Council that fireworks are set off as early as noon time or even 5:00 o'clock in the afternoon. Councilor Michael Cummings expresses his concern that the Council represents the entire City and cannot consciously make a decision for the entire community because of a grievance between neighbors. Danny Waggoner speaks that dividing a City into zones will move the problem from one area to another and suggests restricting it to two days a year. Jon McNerney asks the Council what the value is for permitting people to shoot off fireworks. Various responses come from entertainment to enjoyment. His concern is the harassment of people and the poor judgment of people using fireworks. Thus, he supports the ban with the exception of

having the technicians come in. Mr. Bernard Grazulwich informs Council that he has two dogs and that they are terrified of fireworks and reminds Council that Eastport has a large dog population. Greg Noyes feels that the issue is whether or not we are willing to give people a license to disturb the peace of others where they live and expresses that this is what it boils down to.

Councilor Michael Cummings asks if it is too late to put it out to referendum for the November election. The Council President and the City Clerk both affirmed that it was. He further comments to say that he sympathizes but will not make a decision to implement a ban.

Councilor Colleen Dana-Cummings comments to say that she is not comfortable voting on the two ordinances presented this evening as no one has had a chance to read them and digest them. She would like to see a compromise and allow them some time of the year and does not want to ban them totally. However, she totally understands Carolyn Lowe's frustration. She continues further to say that clarification is needed as she is of the understanding that this does not even permit sparklers and is not in favor of that. The Fire Chief reminds them of the definition of fireworks vs. consumer fireworks and the Council President comments to say that a change could be made to reflect the exception. He clarifies that sparklers are considered consumer fireworks.

Councilor Scott Emery speaks to the time that the Council was considering an ordinance the first time around when there was a lot of controversy and it was the will of the people then to ban fireworks, but the Council elected to let them have the fireworks and should there be problems; then they would revisit it and do something different and this is where we are at now.

Council President, Mary Repole, expresses that she is in favor of the ban.

The Fire Chief, Richard Clark, speaks in reference to the article in the Bangor paper that several people have come to him that want fireworks and asked questions but they are all under the presumption that he can issue a permit for them and he clarified that he could not.

Carolyn Lowe asked the Council President if Council had received any letters from people. Mary Repole responded that there were a total of twelve received and none were in favor of fireworks.

Jon McNerney asked how many hotspots there were. References were made to Wilson Street, Water Street, Byrd Street, and Toll Bridge Road.

Danny Waggoner asks the Council if they feel, at this point and time, that they have enough information to make a decision and recommends considering doing a "straw poll" at the election and it would assist the Council in their decision of having knowledge of where the people are at with this issue. Council President, Mary Repole, responds that she able to make her decision at this time, but speaks only for herself. Councilor Scott Emery and Councilor Colleen Dana-Cummings both affirm that they feel they also have enough information to make a decision as well and Councilor Michael Cummings already knows where he is at with his decision.

Councilor Scott Emery suggests that fireworks be banned and feels that it was a bad choice to have allowed it previously.

Councilor Colleen Dana-Cummings expresses that she *is not* comfortable voting for a ban.

Councilor Michael Cummings *is not* in favor of the ban and wishes to remain with the status quo of the State regulations and apologizes if anyone takes this personally.

Council President asks if anyone is in favor of bringing this up at the next Council meeting with something more definite. Councilor Michael Cummings emphasizes the needs for the people of the town to vote. He is reminded that this couldn't be done until June. The Fire Chief asks if this will be posted or advertised. Councilor Colleen Dana-Cummings would rather put it out to referendum. Discontent came from the audience to wait until June. Carolyn Lowe addresses the Council and reminds them that all she was asking for was some type of a bumper or a buffer zone.

Legal Counsel, Dennis Mahar, informs Council that they could do a "*straw poll*" and that there are no notice requirements and that they could do this at the municipal election on November 5th.

Council President, Mary Repole, declares the public hearing closed at 6:50 p.m.

MOTION DANA-CUMMINGS SECOND EMERY
To come out of the public hearing and go into the regular portion of the meeting.

PASSED 4-0

The record reflects that Councilor Scott Emery feels that a "*straw poll*" is a waste of time and isn't going to help these people. Should we wait until June and hold a referendum it isn't going to alleviate the problem now.

Jan Finlay asks Legal Counsel, Dennis Mahar, if we would have to wait until June to hold a referendum as the Charter is close to completion and that could be held also at the same time and asks if it could be considered to be held in March. He responds that we could hold a "*Special Election*" with Council approval.

4) ACTION ON PUBLIC HEARING

MOTION DANA-CUMMINGS SECOND CUMMINGS
To authorize a "*straw poll*" to take place at the November 5th, 2013 election to receive local input from the taxpayers to give the Council an insight with regard to a fireworks ordinance with the understanding that the poll is to only assist the Council to know the opinion of the community.

PASSED 3-1 ("NO" – EMERY)

Council President, Mary Repole, emphasizes that the results of the "*straw poll*" will give Council insight as to the consensus of the taxpayers and the people and assist them as to how they will move forward in this matter. The City Manager will assist the City Clerk with the wording of the straw poll survey.

5) ADJOURN

MOTION CUMMINGS SECOND DANA-CUMMINGS
To adjourn.

PASSED 4-0 (TIME: 6:54 P.M.)